TESTIMONY OF SUSAN MASTEN

CHAIR, THE YUROK TRIBE

BEFORE

THE UNITED STATES SENATE COMMITTEE

ON INDIANS AFFAIRS

ON

THE DEPARTMENT OF THE INTERIOR'S REPORT

ON THE HOOPA-YUROK SETTLEMENT ACT.

AUGUST 1, 2002

Good morning, I am Susan Masten, Chairperson of the Yurok Tribe. As you may be aware, the Yurok tribe is the largest Tribe in California with approximately 4528 members, of whom 2579 live on or near our Reservation.

Thank you for holding today's hearing. We consider it a most important hearing for the Yurok people. In particular, thank you, Chairman Inouye for taking this very significant step toward addressing our concerns for equity under the Hoopa-Yurok Settlement Act (Act); and that is to look at what has been achieved or not achieved in the 14 years since the Act was passed and asking what now may need to be done. We are deeply appreciative of your letter of October 4, 2001, in which you invited both Tribes to step beyond the existing Act and address current and future needs.

We know that this Committee, as is reflected in your Report on the Act in 1988, sought to achieve relative equity for both the Hoopa Valley Tribe and the Yurok Tribe. During the course of our many meetings with members of congress and their staff, we have been asked why Congress should look at this matter again. After all, the local congressman introduced the bill; both California Senators supported the bill; as did the Administration.

The answers to these questions are clear. The Act has not achieved the full congressional intent and purpose and congress often has had to revisit issues when its full intent is not achieved. Additionally, we believe that the Departments of the Interior and Justice did not completely or adequately advise Congress of all relevant factors that were necessary to achieve equity.

The Departments had battled the Yuroks over numerous issues during the twenty-five year period preceding the Act. Because of lingering animosity over Short and fishing issues, it appears that Congress may have been misled. Congress did not have the full assistance from the Departments that you should have had. In reviewing the testimony and official communications from the Department, we were appalled that the Yuroks historic presence on the Square was minimized or ignored, and that the relative revenue and resource predictions for the Tribes were erroneous. Furthermore, We are also concerned about the

significant disparity in actual land base that each Tribe received after the partition.

We understand that an unspoken but significant motivation for the Departments, was to keep Puzz, (which held that the Hoopa Valley Tribal Council did not have exclusive governing authority over the multi-tribal Reservation), from subjecting the United States to significant fiscal liability for mistreating so-called "minority" interest tribes or their descendants on multi-tribe Reservations. While the Committee correctly focused on the sovereignty implications of Puzz, the Departments focused on their liability – (reminiscent of Cobell, today). Also, and perhaps, more important, apparently the Department was not cognizant that the United States also had a trust responsibility to the Yurok Tribe and the Yurok people.

Can you imagine in this day and age, an Assistant Secretary addressing a serious dispute between tribes by describing one side as "a model Indian tribe" and then dismissing the other tribe as some sort of remnant whose members needed no more than 3000 acres, because barely 400 Indians remained on what would become their Reservation? This same Interior Department that told Congress that the income of the Tribes would be reasonably equivalent; the Hoopa Valley Tribe would earn somewhat over a million dollars a year from timber resources and that the Yuroks had just had a million dollar plus commercial fishing year.

Here are the real facts. Several thousand Yuroks lived on or near the reservation; "On or near " is the legal standard for a Tribe's service population. As the Committee is aware, the Yurok Reservation straddles a River Gorge and has a severe lack of infrastructure – lack of roads, telephones, electricity, and housing, as well as significant unemployment and poverty levels. Further, there is a desperate need for additional lands - particularly lands that can provide economic development opportunities, that provide adequate housing sites and that meet tribal subsistence and gathering needs.

The Department gave the impression that the predominantly Yurok Short plaintiffs had abandoned their traditional homelands; that they were spread out in over 36 states; that they were predominately absentee; perhaps non-Indian descendants and were just in the dispute for the

dollars, was highly insulting to the Yurok people and a disservice to Congress. There were at least as many Yuroks on or near the Reservation as there were Hupas. And as noted above we still have significant land and resource needs that have not been met.

With respect to the relative income or resource equivalency status projected for the partitioned Reservations, which was so critical to Congress' intent to provide an equitable partition; it is true over the past three decades there has been a couple of commercial fishing years that were viable and there was one such year shortly before the HYSA was enacted. True, but also very misleading. First of all, commercial fishing income, if any, went predominately to Hoopa and Yurok fishermen. Moreover, the fact was that in most years there was no commercial fishery whatsoever; in many years there were not enough fish for subsistence and ceremonial purposes.

Since the Act, in the Klamath River system, COHO salmon have been listed as an endangered species and some other Klamath River fish are threatened to be listed. Other Klamath River fish species have become extinct. The causes are multiple. However, recently the fish runs we depend on are subject to fragile water flows. Although we have the senior water right and a judicially recognized and protected fishing right, we have to fight for water with the Department of the Interior's Bureau of Reclamation almost every year to protect our "fishery" resource. In short, the average annual income of the Yurok Tribe from our salmon resource was and is non-existent. Since the Settlement Act, the Yurok Tribe has had a small income from timber revenues, averaging $600,000 annually.

With respect to land base, the Yurok Tribe's Reservation contains approximately 3000 acres of tribal trust lands and approximately 3000 acres of individual trust lands. The remainder of the 58,000 acre Reservation is held in fee title and mostly by commercial timber interests. The Hoopa Valley Reservation contains approximately 90,000 acres, 98% in tribal trust status.

With respect to the million plus dollars in timber revenues projected for the Hoopa Valley Tribe, written testimony of the Hoopa Tribal attorney in 1988, indicated that at the time of the Act, the annual timber revenue income from the Square was around 5 million dollars. In the

14 years since the Act, the timber revenue has been 64 million dollars. Additionally, the new Hoopa Valley Reservation has considerable mining resources (aggregate) that were known at the time of the Act. Our understanding is that aggregate mining currently produces a substantial income.

The point is, that the projected revenue comparison that should have been before the Committee was zero fisheries income and more than 5 million dollars in annual timber and other revenues from the Square, and not the nearly equivalent million or so dollars for each Tribe that the Committee Report relied upon. This inequality of lands, resources, and revenues continues today and significantly hinders the Yurok Tribe's ability to provide services to its people.

Unfortunately, the Yurok Tribe in 1988, unlike today, was unable to address this misleading provision of key information. The Yurok Tribe, although federally recognized since the mid-nineteenth century, was not formally organized and had no funds, no lawyers, no lobbyists, no historians, no anthropologists, etc. to gather data to analyze the bill to present facts and confront misinformation. Individual Indians did testify, albeit ineffectively, during field and D.C. hearings of relevant Committees. Some of these witnesses were exceedingly hostile to Congressman Bosco and his bill; some witnesses seemed to support the legislation; while others appeared to support aspects of the legislation such as the organizing provisions for the Yurok Tribe. Today, some of these witnesses are Yurok Tribal members, some took the buy-out option and others became members of near-by rancherias. However, they were not the Yurok Tribe.

In some ways the lack of formal organization of the Yurok Tribe seemed to have hamstrung the Yurok people. As noted in our chronology, attached hereto, none of the traditional tribes of our area were organized before 1950, and in spite of that fact, they managed to negotiate treaties, survive the gold rush and periodically go into federal court to protect their fishing and cultural rights. It was the Interior Department that assisted in organizing some Hoopa Valley residents as the Hoopa Valley Business Council for the purpose of selling timber. The Interior Department did not attempt to organize the other tribal Indians of the Reservation or near-by communities. At that

time, the Interior Department was busy illegally terminating 110 other tribes in California at the height of the "termination era." There was no political or economic imperative to organize Indian tribes in our area. By the time the Short plaintiffs again went to Court to vindicate their rights, the Department had so polluted Indian relations on the Joint Reservation that any organizing efforts were tainted by distrust.

It is also our view that before the passage of the Settlement Act, the Interior Department did not do enough to pursue Yurok tribal input. There were things they could have done in the years following the Short decision. For example, they could have utilized the General Council of the Yurok Tribe which then existed, to address land and governance issues. The General Council was after all the entity that authorized the Yurok Tribe v. United States lawsuit and the "conditional" waiver. Lack of formal organization is not a complete bar to governing. We are aware that other Tribes in California are currently not formally organized and operate by General Council, including running 100 million-dollar plus casinos.

Other devices and approaches were also available other than partition. Where for example was the use of Reservation wide referenda; a tool widely used in restoration and recognition processes? Although Congressman Campbell inquired about the Wind River model in House hearings, the Department did not appear to have considered this pertinent model for multi-tribe Reservations where each Tribe retains its sovereignty and some territorial jurisdiction. There are other models that come readily to mind, that also did not appear to have been considered. There are many tribally consolidated Reservations in the northwest, such as the Quinault Indian Reservation where membership in 8 historic Indian tribes is the basis for membership in the Quinault Indian Nation. These approaches do not appear to have been considered. Did the advice Congress received have to be limited to partition?

It is important to acknowledge that from a Yurok perspective a positive result of the HYSA was that it helped develop the preliminary Yurok tribal Roll and provided us with limited funds to retain attorneys and others to assist us in the creation of this base Tribal Roll and the development of the Yurok Constitution. We also appreciate that the Senate Committee report recognized and

acknowledged that the Tribe could organize under its inherent sovereignty.

Had we been a formally organized Tribe with even limited financial and technical resources and testified before you in 1988, we would have pointed out that while it is true that the Square (Hoopa Valley) is part of the homelands of the Hupa people, it is also true that the Square is part of the ancestral homelands of the Yurok people. Almost without fail throughout the testimony you received in 1988, the Square is described as Hoopa and the Addition is described as Yurok. As the Ancestral Map that you see here indicates, Yurok ancestral territory was quite large, encompassing all of the current Yurok reservation and 80% of what is now Redwood National Park as well as significant portions of the U.S. national Forest. You should note that a portion of the Square has always been part of Yurok ancestral territories. Yurok Villages existed in the Square and their sites have been verified by anthropologists. This fact is not a matter of dispute. The United States Department of Justice and the Hoopa valley Tribe in the Yurok Tribe v. United States litigation agreed in the joint fact statement that the Yuroks were always inhabitants of the Square. (Statement provided for the record) We are not claiming that we had Indian title to the whole Square, but that we have always been part of the Square. The Short cases made the same determination.(See attached summary of Short) At the time of your 1988 hearings, there were 400-500 Yuroks living on the Square. As one of the individual Yurok witnesses noted, over 50% of the students at Hoopa High School were not members of the Hoopa valley Tribe. Today, some 800 Yuroks live on the Square. The Square is included in one of the largest Yurok Council districts population-wise and the Yuroks living there elect one Yurok Council member from that District. I in fact live there.

We think that these different perspectives are important as we consider today's issues, however, it is critical for everyone to be aware that the Yurok Tribe has not, will not and is not asking Congress to take back anything from the Hoopa Valley Tribe that it received under the Act. We have no current legal interest in the land or resources the Hoopa Valley Tribe received from the Act.

What we do want is the Committee to look at are the relative equities achieved under the Act understanding that

the Yuroks have always been inhabitants of the Square and have never abandoned our connection to our territories, our culture, and our traditions.

We have already noted that there is a significant disparity in income, resources, land base, and infrastructure as a result of the Settlement Act. The data provided by the Interior Department today supports our positions. I need to acknowledge that Interior Department officials today treat the Yurok Tribe in a fairer manner than previously and for that we are appreciative.

The Hoopa Valley Tribe received a 90,000 acre timbered Reservation, of which 98% are held in tribal trust status. The Yurok Tribe received a Reservation whose boundaries contained 58,000 acres, however, only 3000 acres were in tribal trust and only a small portion of those acres contained harvestable timber. If you look at the Map that we have provided showing the two Reservations and trust and fee lands, you can visualize the extreme disparity.

We have already noted that the income projections for the respective Tribes were erroneous. Time has verified that the predictions of a bountiful or restored fishery have not come to pass and that the fishery infrequently produces any income. It is also a resource that we share with non-Indians, as well as the Hoopa. Hoopa timber resources, however, have produced substantial income exceeding the 1988 predictions, as reflected in the Interior Department's records.

In addition, as this Committee is aware from your recent joint hearing on telecommunications, infrastructure on the Yurok Reservation is dismal. This in part is due to the fact that it is difficult to develop a remote River Gorge. The lack of infrastructure is also due to the fact that the B.I.A.'s agency office was on the Square. The B.I.A. provided some infrastructure to the Square, but it totally neglected the "Addition".

In our response to Senator Inouye's letter of October 4, 2001, we have submitted an outline of an economic development and land acquisition plan to the Committee. (See attached Plan.) We have provided copies of our Proposed Plan to the Department of the Interior. The Plan

is based in large part on the Settlement negotiations that occurred with the Department in 1996 and 1997.

What we would like to see as a result of this hearing is the creation of a Committee or a working group composed of Tribal, Administration, and Congressional representatives. We would also hope the Committee would be under the leadership of Chairman Inouye. This committee would have as its task the development of legislation that would provide to Yurok people the viable self-sufficient Reservation that was the original intent of this Committee in its effort to achieve equity.

If there are issues that the Hoopa Tribe wishes to address for the same end for its Reservation, we would support a separate working group for them.

Although as you can see our issues are broad based and focused on full equity for the Yurok Tribe, the immediate concern that prompted the Department's Report and this hearing is the balance of the Hoopa-Yurok Settlement Fund.

The Interior Department has said that neither Tribe is legally eligible to receive the balance of the Fund and that Congress should address the issue. Our view is simple, the financial equities and the actual distributions of timber revenues from 1974 to 1988 clearly demonstrate that the balance of the Fund should be made available to the Yurok Tribe as the Act clearly intended. In fact the monies are held in the Yurok Trust Fund. Arguments that the assets are from the Hoopa Reservation, or that most of the income came from the Square, are misplaced. These revenues belonged as much to the Yuroks of the Square and Yuroks of the Addition as they did to the Hupas of the Square. This is the key point of the cases we both lost in the Claims court, Short v. United States, Hoopa Valley Tribe v. United States, and Yurok v. United States. The point being that prior to 1988 the Hoopa Valley Reservation was a single Reservation intended for both Tribes and whose communal lands and income were vested in neither Tribe. Short also means that the Department could not favor one Tribe above the other in the distribution of the assets. These are pre-1988 monies; we should not have to re-argue what Yuroks won in the Short cases.

As noted in our Annotated Chronology, the Department of the Interior, after the final decision in Short I in

1974, ceased to distribute timber revenues exclusively to members of the Hoopa Valley Tribe and began to reserve 70% of the timber revenues for the Yurok plaintiffs. The remaining 30% of the revenues were reserved for Hoopa in a separate escrow account. The proportionate allocation was based on the Hoopa Valley tribe having a population of 1500 members and the Short plaintiffs numbering 3800 persons.(See, Hoopa Valley Tribe v. United States.) For 14 years from the final decision in Short until the passage of the Settlement Act, the Department provided almost all of the 30% of the annual timber revenues reserved to the Hoopa Valley Tribe and retained the other 70% in an escrow account for the Yurok plaintiffs. I believe the Department has provided the Committee with the amount of $18,955,885, of the $19,000,000 reserved as the amount received by the Hoopas for that 14 year period.

When we have discussed the timber revenues from 1974 to 1988 with our colleagues on the Hoopa Tribal Council, they assert that 100% the revenues were theirs or should have been theirs. Legally, as the Committee knows, that was not the determination of the federal courts. No Indian tribe before 1988 had a vested right to the Square or its assets. The Hoopa Tribe even made this same argument in Yurok v. United States. As we have noted several times, both Hupas and Yuroks were aboriginal inhabitants of the Square. The 1876 and 1891 Executive Orders had created a single Reservation of some 155,000 acres in which neither Tribe had vested property rights.

In 1974, the federal courts had determined that the Secretary had since 1955 wrongfully made per capita revenue distributions to only Hoopa Tribal members and that the plaintiffs (mostly Yurok Indians) were entitled to damages against the United States. Damages were eventually provided to the plaintiffs for the years 1955 through 1974, but not for 1974 through 1988. So the point is that the legal status of the 1974 to 1988 timber revenues was, although neither Tribe had title to timber or a constitutional right to the revenues, if the revenues were distributed to one group, the other group was entitled its fair share. It did not matter what percentage of the timber proceeds came from the Square or came from the Addition, because according to the federal courts, neither revenues were vested in either Tribe.

The 1974 to 1988 revenues were distributed to the Hoopa Tribe and paid out in per capita payments. First under the 30% Hoopa share or $19,000,000 payments and second, under the transformation of the 70% Escrow Account (established for Yurok Plaintiffs) effected by the Settlement Act.

As you are aware, the Settlement Act created a Settlement Fund from the 70% Escrow account ($51,000,000), the small balance of the Hoopa 30% Escrow account, and some smaller joint Hoopa/Yurok, and Yurok escrow accounts, as well as a 10 million dollar federal appropriation. When the 1988 Base Membership Roll of the Yurok Tribe was established in 1991 and the 1991 Membership Roll of the Hoopa Valley Tribe was verified, the Settlement Account was proportionately allocated between the two Tribes based on tribal membership.

The Hoopa Valley Tribe was allocated 39.5% of the Settlement Fund or $34,006,551. Because the Hoopa Valley Tribe had executed a waiver of its rights to challenge the Act for any unconstitutional taking,(in 1988 and the waiver was published by the Department,) the Department provided these funds to the Hoopa Valley Tribe.

Technically because the Act had allowed the Hoopa Valley Tribe to draw down 3.5 million dollars a year from the Settlement Fund and provided for a $5000 per capita payment directly to members of the Hoopa Valley Tribe, the Tribe was provided with the adjusted balance of its 34 million dollar share. Some observers have confused the subtractions from the 1991 payments as adjustments for the 30% payments made from 1974 through 1988; they were not. The Act did not call for adjusting or accounting for these 30% payments and no adjustment was made.

In total, from the 1974 to 1988 timber revenues and interest of approximately $64 million, in 1991 the Hoopa Valley Tribe (39.5% of the then population) received a cumulative total of 53 million dollars or 84.2% of the total amount timber revenues of the period.

Also in 1991, the claims attorneys for the Short cases sued the United States to try to recover attorneys fees from the Settlement Account. Two other Yuroks and I intervened in the case as co-defendants, with the approval of the United States, to protect the Yurok share of the

Settlement Account. With the active encouragement of the Justice Department attorneys, (they were very pleased to have us as co-defendants), we won the case and protected the Account.

After the withdrawal of Revenues for the Hoopas, the remainder of the Settlement Fund was then deposited in a Yurok Trust Account. Payments authorized by the Act to persons who enrolled in the Yurok Tribe or who took the buy-option were also deducted from the Yurok balance of the Fund. We should note as the Interior Departments data confirms, these payments to individuals exceeded the $10,000,000 federal contribution provided by the Act. In 1993, when all the withdrawals were accounted for in the Settlement Fund Statement, (See attachments to Interior March 2002 Report, the Yurok Trust Fund had a balance of $37,819,371.79. We have been provided with statements of the Account's balance every month since and our advice has been consistently solicited with respect to investments.

As you are aware in 1993 the Yurok Tribe, as instructed by its General Council brought suit against the United States for a taking claim under the Act. We lost this case in 2001 when the United States Supreme Court declined to review a 2-1 decision of the Federal Court of Appeals. We lost this case on the same basis that the Hoopa Tribe lost all of their pre 1988 cases; no part of the pre-1988 Hoopa Valley Reservation was vested to any Indian tribe; and none of us had title against the United States. We could argue that the case was unfair and historically blind, and that it is outrageous to use antiquated and colonial notions of Indian title in modern times, as the dissenting federal judge did. But it doesn't matter. We lost, as the Hoopa Tribe lost before us, and in this legal system the only appeal we have left is an appeal to equity and justice before the Congress; the Congress that has plenary power to fix these wrongs.

In 1993, we also adopted the "conditional waiver" which provided that our waiver was only effective if the Settlement Act was constitutional; which as I noted a few moments ago, the courts have determined that the Act is not unconstitutional. That determination should have been sufficient to meet the condition of our waiver. The Department of the Interior, however, determined that our waiver was not effective. Although we disagree, we have

not challenged its determination in court and will not take up the Committee's time to debate it today.

The Department, as noted earlier, determined that the Hoopa waiver was effective and that the Hoopa Valley Tribe received what it was entitled to under the Act and it has no addition legal right to the Settlement Fund. In its view the Department cannot disperse the balance of the Settlement Act to either Tribe. The Department has now reported to Congress that you should, consistent with its recommendations, resolve the balance of the Fund issue. Among other things, the Department sees itself as the Administrator of the fund for both Tribes. It indicates that you should take into account funds already received and be cognizant to the purpose of the Settlement Account to provide two self-sufficient Reservations.

We think a better solution would be to permit the Yurok Tribe to administer its own trust fund with the balance of the Settlement Account. We of course, would be willing to submit a Utilization Plan for review and approval. Our Constitution, in any event, requires us to provide a Plan for the approval of our membership. As we have indicated a complete review of the record does indicate that the almost all of the trust lands, economic resources, and revenues of the joint Reservation that existed prior to 1988, when neither Tribe had more legal or historic rights to these resources than the other, have to date been provided almost exclusively to the Hoopa Valley Tribe.

A final point in these prepared remarks, in 1996, we struck a deal with the Hoopa Valley Tribe whereby we supported H.R. 2710 and they supported our settlement negotiation issues, specifically turning over the balance of the Settlement Fund to the Yurok Tribe. Apparently the Hoopa Valley Tribal Council now believes that its end of the deal ended with the collapse of the Settlement negotiations. We lived up to our end of the bargain and the Hoopa Valley Tribe received some 2600 acres of trust lands to "square" off the Square. Copies of both of our 1996 commitment letters have been provided with our written testimony.

I again thank the Committee for the opportunity to appear today and will be very happy to answer any questions you may have.